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Paper No. 18

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**MAILED**  
**MAR 06 2012**  
**OFFICE OF PETITIONS**

In re Patent No. 5,918,323 :  
Issued: 07/06/1999 : LETTER  
Application No. 08/506,851 :  
Filed: 07/25/1995 :  
For: HOSPITAL LIQUID :  
SANTITATION CART :

This is a letter in reference to the paper filed on September 28, 2011, styled as a petition under 37 CFR 1.378(c).

The petition cannot be treated on the merits for the reasons stated below.

37 CFR 1.378(c) provides that a petition to accept an unintentionally delayed payment of a maintenance fee must be filed within twenty-four months of the six-month grace period provided in § 1.362(e) and must include:

- (1) The required maintenance fee set forth in § 1.20(e) through (g);
- (2) The surcharge set forth in § 1.20(i)(2); and
- (3) A statement that the delay in payment of the maintenance fee was unintentional.

The petition lacks items (1), (2), and (3).

With regard to items (1) and (2), the maintenance fee and surcharge have not been paid. The 7.5 year maintenance fee (currently \$1,425.00 for a small entity) and the surcharge of \$1,640.00 must be filed with the petition.

The petition lacks the fee required by 37 CFR 1.378(c)(2).

Patent and trademark fees and charges payable to the Patent and Trademark Office are required to be paid in advance, that is, at

the time of requesting any action by the Office for which a fee or charge is payable.<sup>1</sup> As such, the petition fee is a prerequisite to the filing of the present petition, and the Office will not reach the merits of the petition unless and until the petition fee is submitted. Any request for reconsideration of this petition must be accompanied by the petition fee.

With regard to item (3), a statement that the delay in payment of the maintenance fee was unintentional has not been provided.

The patent expired on July 6, 2007, for failure to pay the 7.5 year maintenance fee.

It is further noted 35 U.S.C. § 41(c)(1) authorizes the Director to accept a delayed maintenance fee payment within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) if the delay is shown to have been unintentional, and authorizes the Director to accept a delayed maintenance fee payment at any time if the delay is shown to have been unavoidable. Thus, 35 U.S.C. § 41(c)(1) does not authorize the Director to accept a delayed maintenance fee payment later than twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) unless the delay is shown to have been unavoidable. Since the instant petition was not filed within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b), the Director cannot accept a delayed maintenance fee payment for the above-identified patent under 37 CFR 1.378(c).

Should petitioner wish to pursue reinstatement of the above-identified patent on the basis of unavoidable delay, petitioner should file a petition under 35 U.S.C. § 41(c) and 37 CFR 1.378(b), which must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1) (currently \$700.00).

A copy of the form for filing a petition under 37 CFR 1.378(b) is enclosed for petitioner's reference.

With regard to petitioner's request for information regarding ownership of the patent, a review of Office assignment records

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<sup>1</sup> 37 CFR 1.22(a).

does not reveal that any assignments have been recorded for this patent.

The address in the petition is different than the correspondence address. A courtesy copy of this decision is being mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record. A change of correspondence address (copy enclosed) should be filed if the correspondence address needs to be updated.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop PETITIONS  
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By fax:           (571) 273-8300  
                  ATTN: Office of Petitions

The file is being returned to Files Repository.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

Encl:           PTO/SB/65  
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